

April 2009

The Honourable Gene Zwozdesky  
Minister of Aboriginal Relations  
203 Legislature Building  
10800 - 97 Avenue  
Edmonton, Alberta  
T5K 2B6

Dear Honourable Minister:

I am pleased to present you with the *sixth* Annual Report of the activities of the Office of the Métis Settlements Ombudsman.

This report is submitted in compliance with Alberta Regulation 116/2007, *Métis Settlements Act*, Métis Settlements Ombudsman Regulation 12(1)(a), covering the period April 1, 2008, through March 31, 2009.

Original Signed by:  
Gary Jones  
Alberta Métis Settlements Ombudsman

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## Message from Gary Jones, Alberta Métis Settlements Ombudsman



I have been with the Office of the Métis Settlements Ombudsman (MSO) since February 2003. Initially, I was one of two Advisors to the founding MSO and have held the position of MSO, as appointed by the former Minister of International, Intergovernmental and Aboriginal Relations, the Honourable Guy Boutilier, since June 2007.

In my estimation, there has been a notable decline, over the past three years, in the cooperative working relationship between *some* of the Métis Settlements and this office. Although cooperation has been maintained

with approximately half of the Settlement Councils, the others seem to view the MSO as an outside intrusion from the Ministry rather than a supportive independent agency established to assist with the enhancement of ethical standards of governance and fairness.

Recently, legal counsel, on behalf of a Settlement in the case of *East Prairie Métis Settlement v. The Métis Settlements Ombudsman for Alberta*, challenged the legal authority of the MSO to investigate allegations made by Settlement members that Councillors were indebted to the Settlement in excess of \$250 without a current repayment agreement, in contravention of the *Métis Settlements Act*. Madam Justice Crighton Q.B. made her decision in support of the MSO's jurisdiction to investigate (under appeal by East Prairie Métis Settlement). However, at paragraph 28, Justice Crighton states: "*The Settlement argues it is important when reviewing the scope of the Ombudsman's jurisdiction to appreciate this Ombudsman is **not a true ombudsman**, as counsel defined that term, but rather is a **delegate of the Minister*** [emphasis added]." Unfortunately, based on the decline in cooperation with this office, it appears this Settlement's opinion is not an isolated one.

Further, there is a mistaken belief that all outgoing correspondence from the Office of the MSO is sent to the Minister of Aboriginal Relations. Correspondence between the MSO and the Minister occurs *only* when the *cooperative review process* breaks down and the MSO is forced to move the *reviews* to a *formal investigation* as outlined in the *Métis Settlements Act*, or when the MSO is required to reply to correspondence in which the letter of origin has been copied to the Minister.

The MSO does not, despite the perception of some Settlement Councils, seek to lessen or replace the decision-making powers of elected officials. The MSO simply looks into complaints regarding *administrative fairness* and *conflict of interest* and makes recommendations intended to assist Settlement

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Councils by providing education and guidance on such issues and by providing a meaningful avenue to resolve complaints.

In the past year, two Settlement Councils sent formal notification that communications and correspondence in relation to files worked on by the Office of the MSO be directed to the Settlement's legal counsel (lawyer). These same Settlement Councils also instructed their administrative staff **not to respond** to direct requests for information from this office. This adversarial approach by these Councils only slows the process of resolving the complaints made by their membership and makes the end result more costly to the Settlements and the Office of the MSO. This fiscal year, legal fees totalling \$41,000 were incurred by this office as a result of these *stalling tactics* and *legal challenges* to the MSO authority. Moreover, it is unfortunate that Settlement complainants have to suffer not only these delays, but they also must witness the spending of Settlement funds on legal fees that arguably could have been better used elsewhere on the Settlement.

With the importance of housing to the well-being of Settlement members, it is not surprising that new housing allotment and repair program decisions continue to be the source of a significant number of complaints. Many members perceive that the selection process is systemically unfair, and they allege that Councillors' immediate family or extended family members appear to disproportionately receive new housing. In these cases over the past year, the selection criteria was either not published or not properly used.

To address the unfairness identified by this office through the *review or investigative process*, the following are some of the housing selection recommendations made by the Office of the MSO to the Councils involved:

- A Housing Committee be established to perform the duties of housing selections.
- Council appoint an independent Chairperson, skilled in *administrative fairness* procedures, to this Housing Committee.
- New housing selection criteria should include, but not be limited to, such considerations as: health and safety concerns, the number of people in the family, the number of years residing on the Settlement, the age of the applicant, the ability to maintain a house, and overcrowding.
- A point system should be used to establish scores for each criteria, to ensure there is a measureable guideline.
- Future Housing Committees be installed in advance of any housing decisions, and this Committee should be responsible for: posting any competition for housing, publishing the criteria, receiving applications, scoring the criteria (if required), confirming the information on the application forms, submitting to Council recommendations as to the names of the successful applicants, and providing reasons for non-selection pursuant to the Housing Committee Policy.
- Applicants who were not successful in receiving housing should be able to review their scores and thereby gain a meaningful understanding of why they were not selected.
- The above recommendations be included within a bylaw amendment to be voted on by the membership.

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- Major repair and upgrade programs should be stated in a bylaw and be amended by the membership. The Housing Coordinator would annually recommend the priority of the projects to Council, by way of a report, based on need as determined by an “independent” inspection and budget considerations.

Adopting such criteria and practices would ensure that housing selections, or housing repair programs, are applied more fairly and consistently. Decisions makers need to be open and transparent in this process by avoiding deliberations *in camera* as much as possible.

Some criticism has been received against this office that complaints are dealt with under the auspices of the Ombudsman’s Own Initiative. Ombudsman’s Own Initiative reviews/investigations are designed to protect the identity of complainants who express fear of retaliation should their name be revealed to the Settlement Council or Administration. The necessity to withhold names of complainants is clearly justified based on recent disturbing comments made by a Councillor who stated: “...it’s a good thing we don’t know who these people are as there would be hell to pay for decades...that’s just the way it is out here”. Previously, a different Councillor threatened to sue if Council was able to find out names of petitioners on a failed petition.

There have been other similar inappropriate statements made to MSO Advisors. Remarks like these serve to heighten our concern for complainants who believe they are in great jeopardy if their names are revealed. This office must continue to do everything possible to protect the identities of the complainants. Addressing allegations and resolving problems should be the Councils’ focus rather than seeking the name of persons making complaints.

All organizations make errors from time to time; however, mature governance structures are able to withstand legitimate criticism. Promptly correcting administrative errors when they are brought to Council’s attention serves to improve public perception of elected officials.

I would like to close by expressing my gratitude for the opportunity to work with my mentor and founding MSO, Harley Johnson, and to the various supportive Settlement members, the Métis Settlements General Council Executive and Assembly members, Board members and staff at the Métis Settlements Appeal Tribunal, the staff at Métis Settlements Land Registry, and officials with the Ministry of Aboriginal Relations. Most importantly, I would like to thank the MSO staff for their dedication in carrying out our mandate during my time in office. I wish them and my successor, Dr. John F. Brosseau, all the best as they continue to work with the eight Alberta Métis Settlements to attain the shared goal of enhancing self-governance and accountability.

Original Signed by:  
Gary Jones

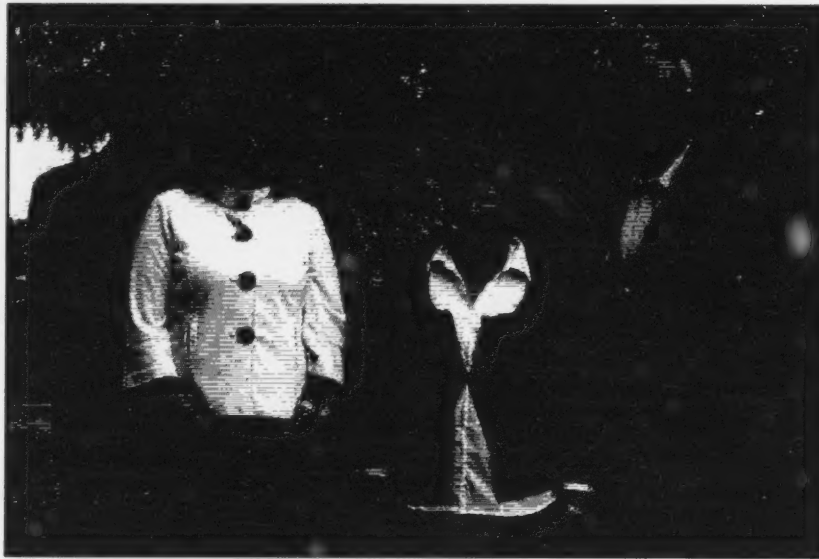


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## Introduction to Staff

The Office of the Métis Settlements Ombudsman (MSO) has been operating since April of 2003. Our goal is to provide exceptional service to the members, Councils and staff of the eight Alberta Métis Settlements.

Staff members as of March 31, 2009:



Left to right:

**Keith Pink, Advisor**

**Danielle Cardinal, Advisor**

**Chuck Moberly-McBurney, Senior Advisor**

**Terri Dorfman, Office Administrator**

**Gary Jones, Métis Settlements Ombudsman**

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## Supplementary Support Staff



**Jennifer Rice, Bookkeeper**

Jennifer's accounting background and Simply Accounting software expertise has benefited the Office of the MSO in providing support for the financial operations of the MSO.

Carolyn's previous experience with the Provincial Ombudsman's Office has been an asset to the MSO Office. This year, Carolyn has assisted with the development of our new website, the preparation of the Annual Report and the Annual MSO Open House. She provides administrative assistance on a project basis.



**Carolyn Woudstra, Contractor ~ Administrative Support**

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## Staff Training, Conferences and Presentations

Staff took part in the following meetings and presentations in 2008/09:

### Training and Conferences:

- ❖ Advanced Investigative Training – hosted by the Office of the Ombudsman, Ontario

### Presentations:

- ❖ Hosted Grade 5 Class – Gift Lake School
- ❖ Métis Settlements General Council (MSGC) Councillor Orientation
- ❖ Presentation to the Edmonton Chapter of Certified Fraud Investigators

### Invitations to Participate in Various Meetings and Social Functions:

- ❖ Meeting with the Honourable Gene Zwozdesky, Minister of Aboriginal Relations
- ❖ Métis Settlements General Council Executive
- ❖ Peavine Métis Settlement Council
- ❖ Métis Settlements General Council Golf Tournament
- ❖ Métis Settlements Appeal Tribunal Open House
- ❖ Métis Settlements General Council Christmas Dinner



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## Memorable Events at the Office of the MSO

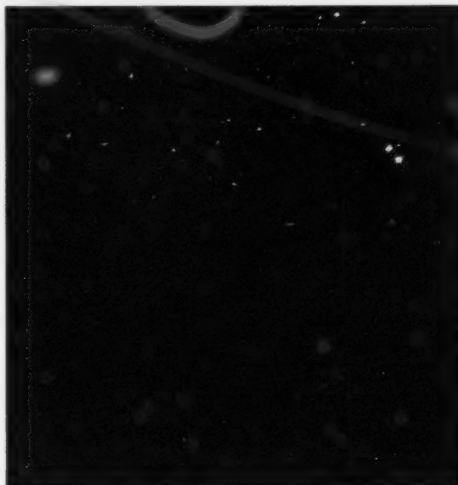
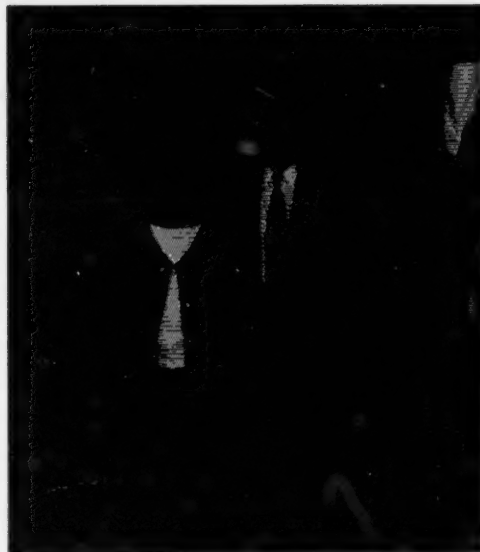


### Gift Lake School Field Trip

Gift Lake School's Grade 5 class came to Edmonton on a field trip. One of the stops while in the city was to visit the MSO Office to learn about what the Office does.

### Visit with the Minister of Aboriginal Relations, the Honourable Gene Zwozdesky

After meeting with Métis Settlements General Council (MSGC), the Minister visited the MSO Office for an introduction to the Office and to the staff.



### 5<sup>th</sup> Annual MSO Christmas Open House

MSGC President Gerald Cunningham poses with MSO Gary Jones.

## Background

The Office of the Métis Settlements Ombudsman (MSO) was created in 2003 to provide an independent and impartial place to take complaints about Settlements' management or leadership. It also exists to identify unfair or unjust complaints made against the Councils and staff.

An ombudsman function was recommended by a 1999 Métis Settlements Appeal Tribunal Task Force report. This was later supported by a feasibility study. The majority of Métis Settlement members and elders attending community consultation meetings supported this recommendation.

Alberta's Minister responsible for Aboriginal Relations appoints the MSO based on a recommendation of a Selection Committee as outlined in Section 4 of the *Métis Settlements Ombudsman Regulation* (Alberta Regulation 116/2007). The Minister delegates the MSO to receive complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the *Alberta Public Inquiries Act*.

## Mission Statement

The mission of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities, and members, through inspections, investigations, and recommendations.

## Guiding Principles

The mission will be accomplished utilizing the principles of *administrative fairness* and *conflict of interest* guidelines, promoting ethical leadership. (In order to better understand the principles of **Administrative Fairness** and **Conflict of Interest**, checklists have been developed – please refer to Appendix C and Appendix D.)

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## Objectives

By authority of a Ministerial Delegation, the MSO:

- ✓ will **assist** Settlement members and Councils to understand the concepts of *administrative fairness* and *conflict of interest*.
- ✓ will **promote** appropriate standards for the delivery of Settlement services.
- ✓ will **accept** complaints from Settlement members who feel that an administrative error or injustice has occurred in their dealings with a Métis Settlement Council, staff, or a Settlement entity.
- ✓ will **accept** complaints from Settlement members who feel that a Métis Settlement Council, an individual Councillor, staff member, or an employee of a Settlement entity has been involved in a *conflict of interest*.
- ✓ will **identify** frivolous, vexatious, or unjust complaints against members of a Métis Settlement Council, staff, or an employee of a Settlement entity.
- ✓ may **conduct** an investigation/inspection where a review of the complaint identifies sufficient evidence to indicate an administrative error or injustice may have occurred in which a Council, Councillor, staff member or an employee of a Settlement entity has acted in a real or perceived *conflict of interest*.
- ✓ may **inspect/investigate** *administrative fairness* or *conflict of interest* issues under the auspices of an Ombudsman's Own Initiative.
- ✓ will **communicate** the results of an inspection/investigation in any fashion the MSO deems to be appropriate, including recommendations to resolve a specific complaint or to improve a service delivery system.
- ✓ will **advocate** for all recommendation(s) made and will **track** implementation steps.

The MSO:

- ✓ cannot accept complaints about issues which occurred before March 31, 2002.
- ✓ may insist that all appeals available to a complainant be completed before the MSO can become involved.
- ✓ is guided by the provisions of Section 171-175 of the *Métis Settlements Act* and the Métis Settlements Ombudsman Regulation (Alberta Regulation 116/2007).

Revised: February 2008

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## Complaint Process

### Investigation and Resolution

It is the mandate of the Office of the MSO to hear complaints and concerns and to deal with them in the most appropriate way. When a complaint is received, the MSO will determine if there is enough evidence to implement a *review*. If a *review* discovers that an error or irregularity occurred, the MSO works informally with those involved to try to resolve the concern and to prevent the same error from happening again.

Concerns that cannot be resolved through the *review* process, discussion or mediation are then approved for investigation. The results of investigations may be made public.

### Making a Complaint

Anyone may make a complaint to the MSO. However, an individual who has a complaint must first try to resolve the matter him/herself. This includes going through any formal appeal processes that might exist with Métis Settlements. Anyone who remains dissatisfied after appeals are heard is welcome to bring a complaint to the MSO.

**There is no fee for filing a complaint.**

### Complaint Criteria

To be considered, a complaint:

- must be about an issue which occurred on or after March 31, 2002. Occasionally, an issue that occurred prior to March 31, 2002, may be reviewed if action (e.g. a decision) on a complaint was taken after March 31, 2002.
- should be in writing. MSO Complaint Forms must be completed, including the name, address, telephone number and signature of the person making the complaint.
- must relate to the activities or business of an Alberta Métis Settlement, Settlement Council, individual Settlement Councillor, or staff.
- must involve alleged mismanagement, an unfair practice or a conflict of interest.
- must be based on facts or evidence.

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**Four basic steps** have been developed for the MSO process of looking at a complaint:

**Further Inquiries:** When a complaint has been received, but there is not enough information to proceed, MSO staff contact the person who submitted the complaint to clarify the issue(s) or to make sure the matter is within the jurisdiction of the MSO.

**Review:** Once the MSO is satisfied the issue is within the jurisdiction of the MSO and the complaint appears to have merit, a *review* is authorized. The advisor/investigator may then contact the Council, staff or Settlement entity to seek help in determining if there is evidence to suggest an error or inappropriate activity occurred. The advisor/investigator then submits recommendations to the MSO based on the findings. That recommendation might be: to close the file, as there is a lack of evidence to support the complaint; to enter into a formal inspection or investigation; or to suggest any other action the advisor/investigator may feel is appropriate. Mediation techniques might also be used during this stage to resolve the complaint.

**Investigation/Inspection:** If there is enough evidence to suggest an error occurred, or a Council, staff member or Settlement entity has acted inappropriately, and it cannot be resolved through mediation, a formal investigation or inspection is authorized under the *Métis Settlements Act* (MSA). Once appointed under the MSA, an investigator has the same power and authority as a Commissioner under the *Public Inquiries Act*. Normally, the person who completed the *review* of the initial complaint would not be appointed as an investigator.

**Formal Report:** If the investigation supports the findings of the *review*, mediation would be attempted once again and a *formal report* would be submitted to the MSO with appropriate recommendations. Any person who might be negatively affected by a *formal report* is given the opportunity to present evidence or argument to the MSO as to why a recommendation(s) should not be accepted.

In cases where MSO recommendations are ignored, or there is a refusal to take action, the MSO may refer the matter to the Minister of Aboriginal Relations who can invoke Section 176 of the *Métis Settlement Act*:

**“Improper management**

176(1) If the Minister considers that the affairs of a settlement are managed in an irregular, improper or improvident manner, the Minister may, by order,

(a) dismiss the settlement council or particular councillors or an employee or official of the settlement, or

(b) direct the settlement council or an employee or official of the settlement to take any action that the Minister considers proper in the circumstances.

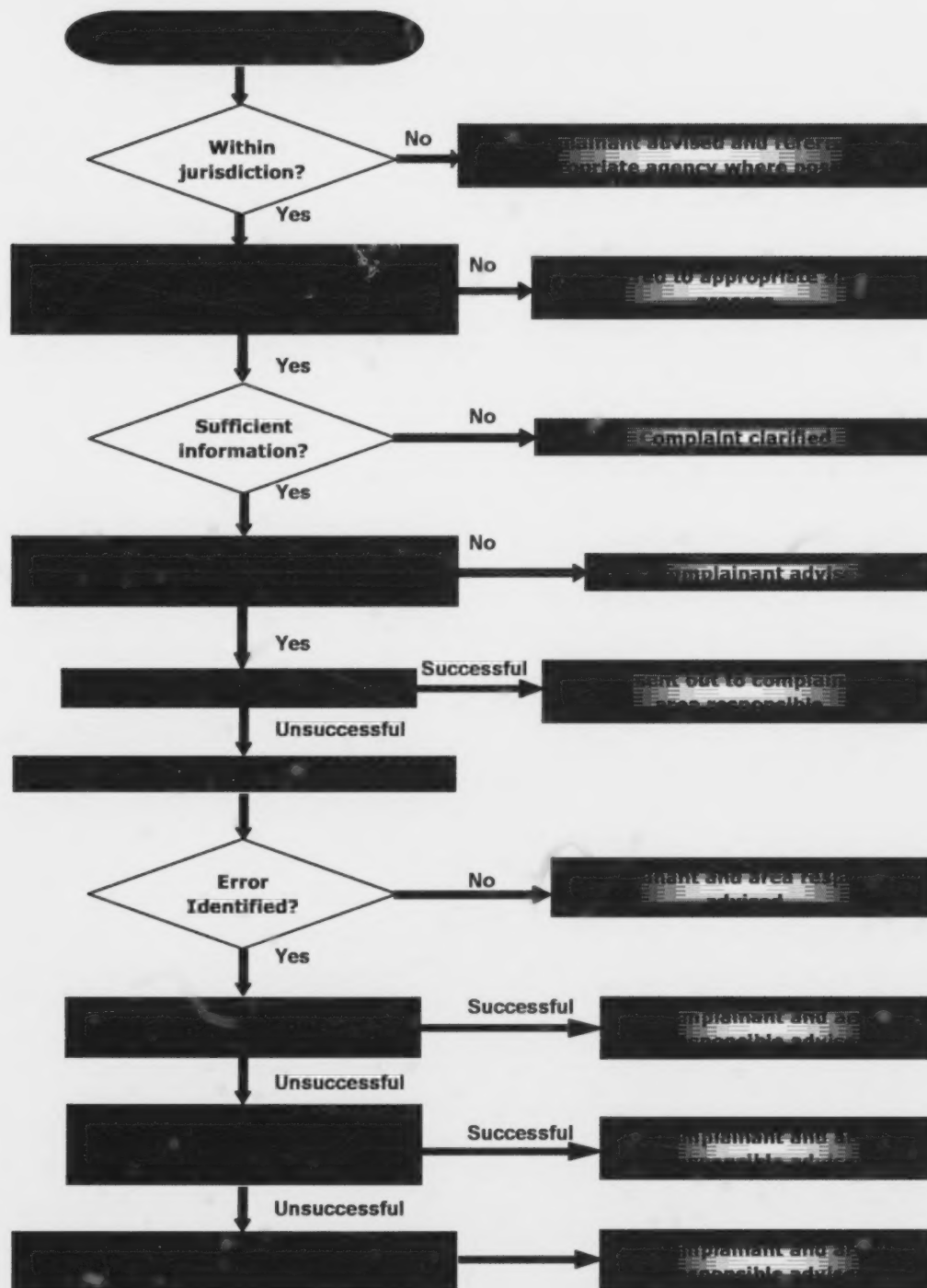
(2) If a direction under subsection (1)(b) is not carried out, the Minister may, by order, dismiss the settlement council or a particular councillor, or an employee or official of the settlement.

(3) An order of the Minister under subsection (1)(a) or (2) must be published in The Alberta Gazette.”

1990 cM-14.3 s176



## Complaint Process Flowchart



## Statistical Information

The Office of the MSO keeps internal, confidential records on the complaints it receives. Statistics are kept to help identify trends and/or areas of concern and to provide direction and focus for the Office. The following chart shows the number of complaints received according to Settlement:

<b>Settlement:</b>	<b>Number of Complaints 2007/08</b>	<b>Ombudsman's Own Initiative 2007/08</b>	<b>Number of Complaints 2008/09</b>	<b>Ombudsman's Own Initiative 2008/09</b>
Buffalo Lake	30	2	30	3
East Prairie	30	7	14	0
Elizabeth	8	0	20	5
Fishing Lake	26	6	21	3
Gift Lake	41	12	13	0
Kikino	12	2	5	0
Paddle Prairie	33	8	31	7
Peavine	37	7	15	0
Other	4	0	0	0
<b>TOTAL:</b>	<b>221</b>	<b>44</b>	<b>149</b>	<b>18</b>

Active files for the 2008/09 fiscal year:

<b>Files Brought Forward April 1, 2008</b>	<b>195</b>	
<b>Complaints/Ombudsman's Own Initiative 2008/09</b>	<b>167</b>	
<b>Total:</b>		<b>362</b>
Resolution of Jurisdictional Complaints/ Ombudsman's Own Initiative:	151	
Non-Jurisdictional Complaints	18	
Requests for Information	31	
<b>Total Complaints Resolved:</b>		<b>200</b>
<b>Total Active Files as at April 1, 2009</b>		<b>162</b>

The total complaints received in 2008/09 can be summarized as follows:

**Complaints Received - April 1, 2008, to March 31, 2009**

➤ Jurisdictional Complaints/Ombudsman's Own Initiative	126
➤ Non-Jurisdictional Complaints	9
➤ Requests for Information *	32
<b>TOTAL</b>	<b>167</b>

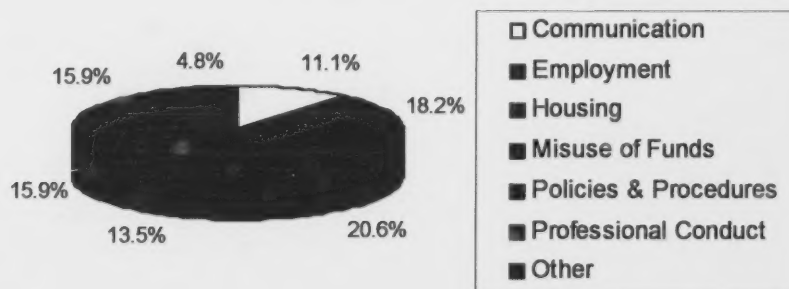
\* Councillors and staff are continuing to use this Office as a resource for information and advice **prior** to making decisions.

Complaints are broken down into **jurisdictional** (those which the MSO has the authority to look into) and **non-jurisdictional** (those outside the MSO authority). Jurisdictional complaints fall within two categories: *Administrative Fairness* or *Conflict of Interest*.

**Jurisdictional Complaints/Ombudsman's Own Initiative 2008/09**

	Complaints		Ombudsman's Own Initiative Areas of Concern	
	Administrative Fairness	Conflict of Interest	Administrative Fairness	Conflict of Interest
<b>Complaint Categories:</b>				
Communication	12		2	0
Employment	15	5	2	1
Housing	21	3	2	0
Misuse of Funds	12	2	3	0
Policies & Procedures	16	1	2	1
Professional Conduct	10	6	3	1
Other	4	1	1	0
<b>Subtotal</b>	<b>90</b>	<b>18</b>	<b>15</b>	<b>3</b>
<b>TOTAL</b>	<b>126</b>			

\*This year, 57% of the total Conflict of Interest complaints were regarding nepotism (favouritism shown to family members).



The MSO makes every attempt to bring about a positive conclusion (for both the complainant and for the party being complained about) through mediation and recommendations.

**Jurisdictional** complaints were resolved as follows in 2008/09:

#### Resolution of Jurisdictional Complaints/Ombudsman's Own Initiative

Files Closed 2008/09

<u>Disposition:</u>	<u>Administrative Fairness</u>	<u>Conflict of Interest</u>
Oral complaint/no formal complaint submitted	43	12
Inquiry made/referral given/resolution facilitated	8	1
Reviewed: Insufficient evidence to warrant inspection and/or investigation	37	11
Reviewed: Sufficient evidence identified and resolved through:		
-mediation/arbitration	1	0
-complaint withdrawn	4	0
-informal resolution successful	23	1
-recommendation made to Council; Council's response pending	1	1
Inspection/Investigation: insufficient evidence	2	0
Inspection/Investigation: recommendation made/resolved through:		
-mediation/arbitration	0	0
-complaint withdrawn	0	4
-recommendation accepted and implemented	1	0
-sent to the RCMP	1	0
Formal report to the Minister		0

*\* Considerable resistance by some Settlement Councils and Administrations towards this Office in the past year has made the review/investigation of complaints difficult to bring to conclusion.*

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## Case Summaries

Every effort is made to avoid taking issues to formal investigation. The goal of the MSO Office is to resolve issues through a cooperative review; however, if appropriate resolution cannot be achieved, a formal investigation may be authorized by the MSO.

The following case summaries provide a sampling of the types of complaints the MSO receives.  
*Every attempt has been made to protect the privacy of the individuals involved.*

### Chairman Not Honouring Agreement

A complainant alleged the Settlement did not sufficiently compensate for the chipping of trees located on lands for which the individual had Métis Title.

The individual was issued a timber permit prior to having the timber chipped. Unhappy with the amount the Settlement allotted per cubic metre, the complainant spoke with the Settlement Chairman asking for additional monies if able to successfully negotiate a higher rate with the forest product company. The Chairman allegedly agreed to this proposal pending Council making a motion in support of it.

The MSO *review* identified that each Métis Settlement has timber title in the name of their Settlement. The title represents ownership of all timber within the Settlement area. Settlement Council has sole authority and responsibility for managing forest lands and timber resources. Council must do its best to benefit the community while adequately compensating titleholders. Timber permits are issued when a member intends to sell and remove timber. Although members are allowed to use timber for personal use, timber on a member's land does not mean the member has exclusive ownership.

MSO queries of the Settlement Council determined that the rates for logging are set by Council in the Settlement Annual Timber Supply Agreement and usually follows the provincial rates. The rates are set out in the timber permit itself when issued and remain the same for all permits within that logging year.

The MSO accounting contractor inspected the Settlement's accounting records which revealed that every timber permit holder is compensated at the same rate. No permit holder receives more or less than this amount; the Settlement is consistent in the rates paid to the permit holders.

For a Métis Title holder to request all of the monies generated from the chipping of timber from their lands is unreasonable as the Settlement has an obligation to ensure the community benefits as a whole from its timber resources. Monies generated as a result of chipping and/or logging are reserved for future reforestation.

The MSO *review* identified the Chairman's comments *did not* imply additional funds, nor the suggested money/tonne, would be released to the permit holder as it was made clear that Council would need to make a motion in support of the proposal.



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The MSO identified no unfairness in this matter and the file was closed.

### **Failure to Process Land Transfer**

A dispute arose over whether the previous home/land owner had the authority to evict the current home owner from a home purchased and paid for.

The matter had been brought before the Settlement Council prior to filing the complaint with the MSO Office. After examining the documentation provided by the complainant, the MSO Advisor determined that it appeared there may have been an administrative error whereby the Land Transfer Agreement document was not properly processed with the Métis Settlements Land Registry Central Office. The oversight resulted in the failure to complete the sale transaction of the home and created an opportunity for the previous owner to potentially benefit from the error. At this point the MSO Advisor attempted to determine if the MSO had jurisdiction as land was at issue.

A Settlement Councillor contacted the MSO office on behalf of the complainant in an effort to resolve the matter. The MSO Advisor informed the Councillor of the possible administrative error.

The Settlement Councillor then took the initiative and re-addressed the matter at a Council meeting, making a motion to correct this administrative error. The Land and Membership Clerk was then instructed to process the Land Transfer Agreement with Métis Settlements Land Registry Central Office, completing the transaction between the complainant and the previous homeowner.

Through consultation with this office and the cooperative involvement of the Settlement Councillor, this issue was promptly resolved. The Settlement Council took the necessary corrective action to address the matter, and the file was closed.

### **Councillor Double Dipping**

A complaint was received that a Councillor was allegedly *double dipping*. The complainant believed the Councillor was receiving compensation from a secondary profession during hours which should have been spent serving as a Councillor.

The MSO appointed an independent Investigator to determine if the Councillor had received permission from Settlement Council to work at the second job and if the Councillor was receiving compensation for the role of Councillor for the days working at the other profession.

The investigation revealed that *Councillors are not considered full-time or part-time employees* of the Settlement and that the *Métis Settlements Act* **does not** preclude Councillors from pursuing other careers or employment during their term of office. This is consistent with general municipal practice across the province of Alberta.

The secondary source of income was determined not to present an opportunity for a *conflict of interest*. The need to advise Council, or to ask permission to continue professional activities, was not necessary in this case; the Councillor did, however, notify Council out of professional courtesy. The Councillor also advised Council of occasions when the external professional commitments may have conflicted with Councillor responsibilities.

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The MSO found that the allegation against the Councillor was *without merit* and the complaint was concluded.

#### **Unfair Treatment by a Settlement Entity**

A complainant alleged a Settlement entity demonstrated *administrative unfairness* when it denied a financial benefit. The entity Board provided the opportunity for members to receive various subsidy benefits. The Board, however, made a *motion* declaring the complainant ineligible to receive the financial benefit based on being a non-residing member of the Settlement for six consecutive months (this residency requirement was established to curb abuse of the program).

Although an off-Settlement relocation had occurred for a period of time, the complainant had returned to the Settlement the year prior and resided with another Settlement member. The non-residency issue was raised at the entity's General Meeting. A *motion* was made and carried by the membership to pay the complainant for some of the benefits but withheld another portion.

The MSO *review* revealed there were delays in payment as a Board member refused to sign the cheque based on *personal feelings*. It was concerning that, despite a *motion* being made and carried by the membership, one of the Board members with signing authority still refused to sign the complainant's cheque.

The Board consists of volunteers who are not compensated for their efforts and dedication. The entity has been a leader in the administration of programs; nevertheless, like any other organization, problems do arise from time to time requiring corrective action. *Personal feelings* need to be set aside while acting in the capacity of an elected Board member.

As the complainant eventually received payment, the matter was resolved and the file was closed.

#### **Unfair Housing Allocation Process**

A Settlement Council allocated a house to a Settlement member (the complainant) and then withdrew the decision after the allocation was posted and advertised. The justification for the withdrawal was that the complainant had *Treaty Status* and was therefore ineligible to receive a house.

The MSO appointed an independent Investigator to investigate the alleged *administrative unfairness* regarding the 2008 new housing allocation process. Specifically, the issues to be investigated were:

1. **Whether the process used by Council to allocate the new home to the complainant and later deny access was administratively fair.**
2. **Whether the failure to release copies of the Council meeting minutes relating to the allocation of homes on the Settlement was in violation of the *Métis Settlements Act*.**

The investigator's assessment found that, pursuant to the *Métis Settlements Act*, at the time of the housing selections, the complainant was a ***current and valid Settlement member*** and was eligible to receive a new house under the criteria set out in the Settlement New Housing Policy. As such, the decision of Council to grant the complainant a new house was a legitimate decision. It was, however, *administratively unfair* to give the complainant a house and then deny access to the house.

The investigator concluded that:

- The complainant was a documented member of the Settlement; membership was never revoked or terminated. The complainant complied with the New Housing Policy and never hid any information about status to the Council or Administrator.
- Council, after considering all of the applicants and all the relevant information as per the New Housing Policy, made a decision to allow the complainant a house. This decision was never ratified but was made public, with no appeal resulting.
- The complainant was given the go ahead to move in to the new house but was later advised that the house was denied as a result of membership issues. The complainant was never given the opportunity to appeal Council's or the Administrator's decision to deny access.
- If, after allocating the new house to the complainant, Council fairly denied the complainant the new house by resolution, then the complainant could have appealed to the Métis Settlements Appeal Tribunal. This did not occur.
- To informally deny the complainant the new house, which was granted by resolution, without a proper hearing was not administratively fair.

For these reasons, the investigator concluded that the act of Council to allocate a new house pursuant to the Settlement New Housing Policy was *administratively fair*; however, by denying the complainant access to the new house in the manner that occurred and failing to release the Council Meeting Minutes was *unfair*.

Based on the findings of the Investigator, the MSO recommended that:

1. Council's Meeting Minutes, in which Council in part resolved to allocate the complainant a new house, be fully ratified and published for the information of the Settlement members;
2. The complainant be entitled to *access* the new house pursuant to the Settlement's New Housing Policy and in accordance with the resolution.

Council accepted the recommendations and passed a motion to that effect. The file was therefore closed.

## REQUESTS FOR INFORMATION

### Conflict of Interest – Sale of Equipment

A Settlement Councillor called wanting to know if equipment owned by the Councillor could be sold to the Settlement.

The MSO advised that if the equipment was advertised for sale anyone can buy it, including the Settlement. The importance of keeping the role of contractor and the role of Councillor separate was stressed. For example, if the Settlement made an offer to buy the equipment, the Councillor could not participate in the discussion or the decision in the role as Councillor. The proper procedure for the contractor/Councillor would be to declare a *conflict of interest* and leave the room during the Council discussion/decision. Section 39 of the *Métis Settlements Act* provides clarification.

### Councillors Abstaining from Votes

A Councillor called to ask for advice on how to interpret the results of a vote when a Council member *abstains*. The query was if the Councillor abstaining could be counted as

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a vote in favor of a motion where there are four Councillors present, two voting for the resolution, one against and one abstaining.

The MSO office advised that an abstention can never be counted in favor of the motion, and it is more correctly interpreted as the equivalent of a "no" vote. All Council resolutions must pass with a minimum of three votes in favor (quorum of five). Any resolution that has less than three Councillor votes fails (section 47(1) of the *Métis Settlements Act*). The Councillor abstaining from voting on a critical decision should be encouraged to vote or state the reason for abstaining, which should be recorded in the minutes for the information of the membership.

#### **Employee Conflict of Interest**

A Settlement employee called the MSO Office for advice. The employee had cheque signing authority and, in this particular case, payment was required for a contractor who was a family member. A competing contractor complained that the employee should not be authorizing cheques for relatives.

The MSO advised the Settlement employee that this was clearly a *conflict of interest* situation for which there could be legitimate criticism. The MSO recommended the employee prepare a letter or memo to Council and the Administrator recommending that, effective immediately, another employee be assigned to review invoices, authorize payments and sign cheques for all matters involving the relative's contracting company.

It should be standard practice on all Settlements that the Administrator or an alternate employee be designated with signing authority for such circumstances.

#### **OMBUDSMAN'S OWN INITIATIVE**

##### **User Fee Exemption for Seniors Contrary to Bylaws/Alleged Conflict of Interest**

It was alleged that immediately after being elected to office, a Council passed a motion to exempt all members 65 years of age or older from paying a *user fee*. The complainant believed Council needed to address this by way of a bylaw, or an amendment to the budget bylaw, to be voted on by the Settlement membership. As the complainant feared retaliation, an *Ombudsman's Own Initiative* was undertaken to address the matter.

The MSO *review* into this concern revealed that there was an existing policy in place which exempted all seniors on the Settlement from having to pay for certain services. It appeared that although user fees are referred to in the budget, Council sets the rates and conditions by policy. The MSO *review* found that Council acted within their jurisdiction when making the amendment to the policy.

A secondary complaint stemming from this issue alleged *conflict of interest* by some Councillors who voted in favor of the motion as they had relatives who were affected by the change in policy. It was the MSO's finding that, due to the number of seniors directly affected by this motion, the Councillors were not in a *conflict of interest* as the motion affected *all* the seniors on the Settlement and not just a select few. If, however, the Councillors were voting on individual members, they would have had to declare a *conflict of interest* if an immediate relative was involved. In this case, all seniors were treated equally by the decision and there was no *administrative unfairness* or *conflict of interest* detected by this process.

The complaints were closed.





## Appendix A

### Ministerial Order

#### Excerpt from Ministerial Order #18/2007 Appointment of the Métis Settlements Ombudsman

I, Guy Boutilier, Minister of International, Intergovernmental and Aboriginal Relations, pursuant to s.175.1(1)(a) of the *Métis Settlements Act* and s.4(1) of the *Métis Settlements Ombudsman Regulation*, hereby appoint Gary Jones, the Métis Settlements Ombudsman.

This order comes into force on June 5, 2007 and rescinds Ministerial Order #17/2007.



## Appendix B

### Budget Variance Report

Office of the Métis Settlements Ombudsman  
as of March 31, 2009

	Budget Allocation	Expenditure	Balance
*Staff	\$ 429,500.00	\$ 390,119.86	\$ 39,380.14
Accounting	\$ 20,000.00	\$ 23,176.26	\$ (3,176.26)
Communications	\$ 19,350.00	\$ 21,969.53	\$ (2,619.53)
Equipment Rentals/Lease	\$ 1,760.00	\$ 1,275.09	\$ 484.91
External Contractors	\$ 500.00	\$ 300.00	\$ 200.00
Insurance	\$ 7,270.00	\$ 4,212.00	\$ 3,058.00
Interest/Bank Charges	\$ 70.00	\$ -	\$ 70.00
Legal	\$ 15,000.00	\$ 9,207.01	\$ 5,792.99
Maintenance/Repairs	\$ 400.00	\$ -	\$ 400.00
Office Supplies	\$ 6,500.00	\$ 6,866.35	\$ (366.35)
Outreach	\$ 4,500.00	\$ 4,621.69	\$ (121.69)
Postage/Courier	\$ 100.00	\$ 14.02	\$ 85.98
Telephones/Internet	\$ 8,500.00	\$ 9,286.77	\$ (786.77)
Training & Development	\$ 6,590.00	\$ 5,597.73	\$ 992.27
Travel	\$ 12,000.00	\$ 5,902.06	\$ 6,097.94
Vehicle Lease	\$ 10,000.00	\$ 7,741.40	\$ 2,258.60
Vehicle Maintenance & Repair	\$ 2,000.00	\$ 619.79	\$ 1,380.21
Vehicle Parking/Building	\$ 960.00	\$ 960.00	\$ -
 **Special Investigations	 \$ 292,500.00	 \$ 236,147.23	 \$ 56,352.77
 <b>TOTAL</b>	 <b><u>\$ 837,500.00</u></b>	 <b><u>\$ 728,016.79</u></b>	 <b><u>\$ 109,483.21</u></b>

#### Notes:

\* Staff shortages created a surplus of \$39,380.14 in the staff line item.

\*\*Special Investigations occur when outside investigators are appointed by the MSO under the *Métis Settlements Act* to perform independent investigations. *Legal fees totalling \$41,000 were incurred regarding stalling tactics and legal challenges to the MSO authority by some of the Settlement Councils attempting to obstruct the work of this office.*



## Appendix C

### Administrative Fairness Checklist

#### Introduction

An important step along the road to self governance and self regulation of Alberta's eight Métis Settlements is the confidence that everyone is treated fairly and with respect, especially when dealing with Councillors, decision makers and persons in positions of authority.

#### Checklist

This Administrative Fairness Checklist is prepared to guide Council, Settlement employees, Settlement entities, decision makers and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted as fairly as possible. This Checklist is a living document that will change from time to time as the need arises.

##### Fairness:

- ✓ Is all Settlement business conducted in a fair and transparent manner?

##### Understanding the Process:

- ✓ Do Councillors, Settlement employees, and decision makers ensure that everyone understands their roles and responsibilities?

##### Impartiality:

- ✓ Do Councillors, Settlement employees, and decision makers make decisions based on what is in the best interest of the Settlement as a whole, eliminating self-interest?

##### Professional Conduct:

- ✓ Do Councillors, Settlement employees, and decision makers treat everyone with dignity and respect?
- ✓ Do members treat Councillors, Settlement employees, and decision makers with dignity and respect?
- ✓ Is unprofessional or inappropriate (unethical, unprincipled, immoral, or dishonourable) conduct allowed to occur?
- ✓ Do Councillors, Settlement employees, and decision makers utter public remarks that are inappropriate?
- ✓ Do Councillors or decision makers threaten or bully employees or Settlement members?
- ✓ Is the use of profane language tolerated?
- ✓ Are policies in place to make offenders of unprofessional or inappropriate conduct accountable for their actions?
- ✓ Do Councillors, Settlement employees, and decision makers misuse or abuse their positions?

##### The Right to Voice a Concern:

- ✓ Are you aware that everyone has the right to voice a concern without fear of punishment or negative consequence?
- ✓ Are you also aware that punishing or allowing negative consequences to occur to someone that has voiced a concern is a serious breach of administrative fairness and/or the Canadian Charter of Rights and Freedoms?

##### Public Information:

- ✓ Is public information available in a format that is understandable and written in plain language?



#### Clarification:

- ✓ Are adequate explanations given to, or information provided to, members asking for details about Settlement activities, personal entitlements, eligibility criteria, etc.?
- ✓ Are efforts made to refer members to the appropriate agencies?

#### Forms:

- ✓ Are all forms that require completion easy to read and written in plain language?

#### Freedom of Information and Protection of Privacy (FOIP):

- ✓ Are FOIP forms available upon a member's request?
- ✓ Is the privacy of individuals adequately protected?

#### Letters and Correspondence:

- ✓ Are members' concerns being responded to in a timely fashion in the form of a letter that can clearly be understood?

#### Facilities:

- ✓ Are work places on the Settlement a safe and healthy environment for staff?
- ✓ Are Settlement-owned buildings and offices designed to respect and protect the privacy of Settlement members, outside agencies, staff, and confidential information?

#### Timeliness:

- ✓ Are decisions made and actions taken within a reasonable time period?
- ✓ Are adequate reasons for decisions and actions communicated to or provided to the affected parties in a meaningful and timely way?

#### Complaint Procedures:

- ✓ Are complaint procedures well known, clearly defined, and understandable?
- ✓ Are community suggestions for improving complaint procedures acted upon?
- ✓ Are complaints given careful consideration and responded to in a timely fashion?

#### Appeal Review and Complaint Procedure:

- ✓ Are affected individuals informed about ways to appeal or to request a review regarding decisions made or actions taken?
- ✓ Is this information provided in a polite, respectful way?
- ✓ Are Settlement members aware of these rights through posters and/or brochures?

#### Roles and Responsibilities:

- ✓ Do all Settlement positions have clearly defined job descriptions?
- ✓ Do the job titles accurately describe the work done?
- ✓ Can jobs be combined or re-organized to achieve a higher quality or better delivery of services?

#### Coordination:

- ✓ Could service quality and fairness to Settlement members be improved through adjustments in policies and procedures?
- ✓ Could relationships with other partners, outside communities, and government agencies be made better through adjustments to policies and procedures?
- ✓ What procedures or checks and balances are in place to ensure that work is being done in the way it was originally intended?
- ✓ Is there an attitude in the work place that promotes growth, change, and ongoing improvement?

#### Consultation with Settlement Members:

- ✓ Are systems in place that accurately record and organize statistical information so that changes in programs or policies can be evaluated and adjusted if necessary?



- ✓ Are Settlement members invited to take part in the planning of, or changes to, the way the Settlement operates?

Housing:

- ✓ Is the distribution/allocation of Settlement housing fair?
- ✓ Do all eligible Settlement members have equal opportunity to receive Settlement housing?
- ✓ Is there clearly defined selection criteria established to receive housing?
- ✓ Are the selection criteria available to the applicants?
- ✓ Are unsuccessful applicants being notified in writing as to why they were not selected?

Jobs:

- ✓ Are members given an equal opportunity to compete for Settlement jobs?
- ✓ Are contracts and work distributed fairly amongst Settlement members?
- ✓ Are Settlement policies being followed in the hiring process?

*Revised: February 2008*





## Conflict of Interest Checklist

### Introduction

All members of a Métis Settlement Community are entitled to a governance structure that operates with fairness, integrity and impartiality of decision-making. Public trust is damaged when the private interests of an elected official or an employee takes, or appears to take, priority over the public interest, thus leading to a *conflict of interest* or a perceived *conflict of interest*.

### Checklist

This Conflict of Interest Checklist is prepared to guide Councils, Settlement employees, decision makers, and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted in an appropriate manner. This Checklist is a living document that will change from time to time as the need arises.

### Definitions:

**Conflict of Interest:** arises when decision makers (Councillors, Settlement employees, Settlement entity employees) are involved in a decision or action during the course of their public duties, knowing that there is, or may be, an opportunity to further his/her personal or financial interests or those of an immediate family member.

**Perceived Conflict of Interest:** arises when a reasonable person could believe that the decision-maker's judgment is likely to be affected by a private interest.

**Potential Conflict of Interest:** is something that may develop into an actual *conflict of interest*.

**Immediate Family:** means spouse, father, mother, brother, sister, and children.

### Conflict of Interest Policy:

- ✓ Is there Settlement policy and/or guidelines regarding *conflict of interest* and, if so, is it followed?
- ✓ Are these policy/guidelines consistent with the *Métis Settlements Act* and/or policies developed by the Métis Settlements General Council?
- ✓ Does Council or Administration ensure that all Settlement managers, employees, and decision makers are made aware of the *conflict of interest* policy and guidelines?
- ✓ What actions are required by public office holders?
  - a) In all cases, the Settlement member who holds a public office is responsible to take immediate action if he/she suspects that an actual, perceived or potential *conflict of interest* is possible, whether financial or otherwise.
  - b) Section 39 of the *Métis Settlements Act* requires a Councillor to disclose any real or apparent financial *conflict of interest* to the Council. If the matter before Council is to be decided by a resolution, the Councillor must withdraw from further discussion, voting, or involvement.
  - c) A Settlement employee is required to immediately disclose a possible *conflict of interest* to his/her supervisor if the employee is in a conflict. The employee must withdraw from any further involvement or action on the matter.

### Examples of Conflict of Interest:

While it is not possible to predict all *conflict of interest* situations, you can use the following headings and questions to help identify where most *conflict of interest* situations could occur.

#### Furthering Private Interests:

- ✓ Does an immediate family member stand to gain or lose financially from the individual's or the organization's decision or action in a matter?
- ✓ Is a Councillor, Settlement employee, or decision maker using his/her position to influence a decision, knowing it might benefit an immediate family member?
- ✓ Is a Councillor, Settlement employee, or decision maker using or communicating privileged or confidential information, knowing it might benefit an immediate family member?
- ✓ Does a Councillor, Settlement employee, or decision maker use his/her position to influence a decision or an action, knowing that it may benefit, or appear to benefit, an immediate family member?

#### Nepotism:

- ✓ Is a Councillor, Settlement employee, or decision maker involved in making a decision to grant a home or renovation to an immediate family member?
- ✓ Is a Councillor, Settlement employee, or decision maker involved in interviews or hiring decisions where applicants include immediate family members?

#### Acceptance of Gifts, Gratuities or Other Benefits:

- ✓ Does a Councillor, Settlement employee, or decision maker accept favours, gifts, services or hospitality from those who stand to gain or lose from that individual's or the organization's decision or action?

*Note: This does not prevent acceptance of small gifts of little value or of a cultural nature or from publicly being recognized for good work.*

#### Outside Employment:

- ✓ Do immediate family members of Councillors or Settlement employees gain or appear to gain an unfair advantage over other Settlement members in obtaining contracts or other outside employment due to their access to privileged information?
- ✓ Does a Councillor, Settlement employee, or decision maker conduct private business during working hours to the extent that it interferes with his/her public duty?
- ✓ Does a Councillor, Settlement employee, or decision maker use public premises, equipment or supplies for private use without appropriate authorization?
- ✓ Does a Councillor, Settlement employee, or decision maker use their public role to advance their own private interests in any way?

#### Public Statements:

- ✓ Does a Councillor, Settlement employee, or decision maker disclose private or confidential information to those who are not authorized to receive it?

*Note: These actions may also be governed by Freedom of Information and Protection of Privacy (FOIP).*

#### Volunteer Activities:

- ✓ Do volunteer activities take up time during working hours?

*Note: Individuals are encouraged to participate in volunteer activities unless this causes an actual or perceived conflict of interest.*

### General Questions to Consider

- ✓ Are the decisions you make as a Councillor, Settlement employee, or decision maker in the best interests of the Settlement as a whole or are they self-serving?
- ✓ Have you made decisions or taken an action that you are not proud of?

*Revised: February 2008*

